IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

OP.No. 22080 of 1998(C)

PETITIONER:

C.KUNHIKANNAN NAMBIAR,
S/O.KANNAN NAMBIAR,
AGED 59 YEARS,
RETIRED TEACHER,
VENGARA P.O.,
KANNUR DIST.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS:
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1. THE ACCOUNTS OFFICER, KERALA AIDED SCHOOL EMPLOYEES PROVIDENT FUND, OFFICE OF THE DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANATHAPURAM.

2. STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER, SRI.R.LAKSHMINARAYAN

THIS ORIGINAL PETITION HAVING COME UP FOR ADMISSION ON 14/09/2007, THE COURT ON 24/09/2007 DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Original Petition (C) No.22080 of 1998-C

Judgment

Balakrishnan Nair, J.

This OP is filed, claiming interest for the provident fund amount, on the ground of delay in paying the same. The learned Single Judge before whom the OP was posted, expressed a doubt regarding the maintainability of the OP as it was filed only for claiming interest. So, it was referred to the Division Bench by order dated 26.11.1998.The brief facts of the case are the following :

2. The petitioner was a Teacher of Vengara Hindu LP School in Kannur district. It is an aided school, governed by the provisions of the Kerala Education Act and Rules. He retired from service on 31.03.1994. He submitted the application for closure of the provident fund account before his retirement. But, there was considerable delay in granting sanction for payment of the amount. Finally, it was sanctioned as per Ext.P1 order dated 12.12.1995. Pursuant to the said order, the provident fund amount was released to him on

28.12.1995. So, there was delay of about 21 months after the date of retirement of the petitioner for paying the amount. But, interest was paid to him, only upto October 1994. So, according to the petitioner, he was eligible to get interest from November 1994 to December 1995. While so, he came to know of Ext.P2 Judgment, in which, this Court has ordered to pay interest @ 12% per annum from 1994 to the date of payment of the provident fund amount in that case. It was also a case where the incumbent retired from service on 31.03.1994. In view of Ext.P2 Judgment, the petitioner caused to issue Ext.P3 lawyer notice under Section 80 CPC, claiming interest @ 12% from 01.11.1994 to 28.12.1995. When there was no response to Ext.P3 notice, this OP was filed, seeking the following reliefs :

> *"(i) issue a writ of mandamus directing the respondents to pay the amount of Rs.13,836/- to the petitioner towards interest on the provident fund money due for the period from 11/94 to 12/95.*

(ii) issue any other appropriate writ or order which this Honourable Court may deem fit to issue in the circumstances of the case ; and

(iii) to pass an order directing the respondents to pay the cost of the proceedings to the petitioner."

According to the petitioner, he is entitled to get interest as in the case of the petitioner in Ext.P2 Judgment. The delay in disbursing the amount is unjustified, it is submitted.

3. The first respondent has filed a counter affidavit, resisting the prayers in the OP. It is submitted that in the case of Teachers, majority of the retirements will be at the close of the academic year. Having regard to the large number of applications received, it is humanly impossible to settle all the claims in time. The delay in this case, was occasioned because of the dearth of staff members dealing with provident fund claims. There was no wilful delay or laches from the part of the respondents to authorise payment of the amount

due to the petitioner. It is pointed out that as per Rule 14(iv) of Chapter XXX KER, the provident fund amount due to the subscriber carries interest for a maximum period of seven months or upto the previous month of the actual disbursement, whichever is earlier.

4. I heard the learned counsel on both sides. The petitioner submitted that the Rule 14(4), restricting payment of interest, of Chapter XXX KER has already been struck down by this Court in **Subraya Bhat v. State of Kerala** (1999(2) KLT 362). Later, the Government have also amended the said Rule. The learned counsel for the petitioner prayed for extending similar treatment that was meted out to the petitioner in Ext.P2 Judgment. The learned Government Pleader, on the other hand, would submit that a writ petition for interest alone, is not maintainable. The petitioner has to file a civil suit for that. In support of that submission, he relied on the decision of this Court in **Vijayakumaran Nair v. State Bank of Travancore** (2005(1) KLT 953). He also pointed out that there is considerable delay in filing the Writ Petition. Even a civil suit, filed for getting interest for the period concerned, is not maintainable, as the claim for most of the period is barred by limitation. In

answer, the learned counsel for the petitioner submitted that the petitioner should have been turned away to invoke the alternative remedy at the threshold. After admitting the Writ Petition and the pendency of the same for several years, it is unjust to turn him away, pointing out the alternative remedy available to him. In support of the said submission, the learned counsel for the petitioner relied on the decisions of this Court in **Thressiamma v. Union of India** (1999(2) KLT 683), **Agricultural Income Tax and Sales Tax Officer v. Tata Tea Ltd.** (2002(2) KLT 433) and also the decision of the Apex Court in **ABL International Ltd. v. Export Credit Guarantee Corporation of India Limited** (2004(3) SCC 553).

5. We considered the rival contentions. We feel that there is unexplained inordinate delay in approaching this Court. Normally, a Writ Petition should be filed within a reasonable time limit against the impugned order or action of the authority concerned. In some decisions, this Court has stated the reasonable period as three months. But whether the delay will be reasonable or not will depend upon the facts of each case. In this case, the payment was made without interest on 28.12.1995. So the cause of action arose on the said date.

Therefore, he should have normally filed the Writ Petition within three months from 28.12.1995. Since no statutory period of limitation is fixed for filing a Writ Petition, if the delay is properly explained for not filing it within a reasonable time limit, it can be entertained. This Writ Petition was filed only on 10.11.1998, i.e., after the lapse of about 35 months from 28.12.1995. No explanation is forthcoming for the delay in filing the Writ Petition. We called for from the Records Section, the Judges Papers in OP No.4638/96, which was disposed of by Ext.P2 Judgment. In that case, the amount of provident fund due to the petitioner therein, who retired on 31.03.1994 was disbursed only on 28.12.1995. Immediately, he filed a representation on 18.1.1996, claiming interest for the amount from October 1994 to December 1995. The said representation was rejected by the Assistant Provident Fund Commissioner by communication dated 26.01.1996. Soon thereafter, the OP was filed on 15.03.1996. In this case, as stated earlier, the OP was filed only on 10.11.1998. The notice under S.80 CPC, preceding the OP was sent only on 03.07.1998. So, there is unexplained inordinate delay in filing this OP.

6. We are of the view that a Writ Petition, claiming interest alone should not normally be entertained. The petitioner should be turned away to invoke the ordinary remedy of filing a civil suit. We respectfully agree with the views of the learned single Judge on this point, in **Vijayakumaran Nair v. State Bank of Travancore** (supra). But, we find considerable force in the submission made by the learned counsel for the petitioner that he should have been turned away, directing to invoke the remedy of filing the civil suit, when the OP came for admission. In this case, the OP was pending before this Court for more than 8 years. So, the dismissal of the OP only on the ground of availability of alternative remedy may not be justified. But, we find that there is inordinate delay in approaching this Court under Article 226 of the Constitution of India. No explanation is given for it in the OP. So, the petitioner is guilty of delay and laches. Therefore, the OP is dismissed as not maintainable.

K.BALAKRISHNAN NAIR,JUDGE

14.09.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**
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